

Application No. 10/619,940
Amendment dated June 27, 2005
Reply to Office Action of April 6, 2005

PATENT

REMARKS/ARGUMENTS

Status of the Application

Prior to entry of this amendment, claims 1, 4, 7-8, 14-15 and 29-42 are pending in the application. Claims 1, 7 and 8 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,337,660 B1 (Huibers et al). Additionally, claims 1, 4, 7-8, 14-15 and 29-42 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4, 11-40 of U.S. Patent No. 6,608,712 B2. This amendment neither cancels nor adds any new claims. Claims 1 and 31 have been amended. Hence, after entry of this amendment, claims 1, 4, 7-8, 14-15 and 29-42 will be pending in this application.

Amendments to the Specification

The specification has been amended to include the most current status of the US patent applications listed on pages 2 and 6. The specification has also been amended to include a cross reference to U.S. Pat. No. 6,608,712 ("the parent application"). This application relies on the parent application as a continuation application for the benefit of the filing date pursuant to 35 U.S.C. § 120. The office action correctly notes that reference to a parent application must be provided within a prescribed period. *See* 37 C.F.R. § 1.78. However, the reference to the parent application was properly included with an Application Data Sheet filed concurrently with the application. *See* 37 C.F.R. § 1.76. (Exhibit A)

Amendments to the Claims

The amendments to claims 1 and 31 have only removed certain language from the respective preambles, which asserted an intended use. This was done to reflect the fact that the claims, as amended, define structures that may be used for other purposes. As such, the amendments do not modify the scope of the claims.

Reconsideration and withdrawal of the rejections are respectfully requested in view of the amendments and the following remarks.

§ 102 Rejections

As noted above, the office action asserts that Huibers discloses of each of the elements recited in claims 1, 7 and 8. As the argument below illustrates, however, Huibers fails to disclose every element of independent claim 1.

Claim 1 recites, *inter alia*, "a beam . . . overlying and coupled to said flexure assembly." Huibers fails to disclose or suggest a beam layer that overlies a flexure assembly. In articulating the basis for rejection, the Office Action draws a correspondence (1) between Huibers' disclosure of a mirror plate 200 and the recited beam layer, and (2) between the disclosed flexures 202 and the recited flexure assembly. Examining Figure 5 of Huibers and its accompanying text, as well as the Invention Summary, Huibers discloses . . . mirror plate (200) attached to . . . flexures (202) at its periphery. Other embodiments that Huibers discloses similarly have flexures that are disposed at the periphery of a mirror plate. (Figure 11 [flexures 414, mirror plate 412], Figure 12 [flexures 424 & 426, mirror plate 422], Figure 13 [flexures 434, mirror plate 432], Figure 14 [flexures 444 & 448, mirror plate 440]). In contrast, in the present claims, the beam layer is required to overlie the flexure assembly. It is noted that the design in Huibers only has support at the periphery, which causes the mirror plate to bow (c. 10, ll. 64 - c. 11, ll. 8). This characteristic may be avoided with the claimed structure.

Independent claims 31 and 40 also have similar limitations and so are believed to be patentable. Claims 2-4, 7-8, 14-15, 29-30, 32-39 and 41-42 are also believed to be patentable by virtue of their dependence from patentable claims.

Double Patenting

Applicant submits herewith a *Terminal Disclaimer to Obviate a Double Patenting Rejection over a Prior Patent* in response to the rejection of claims 1, 4, 7-8, 14-15, 29-42 under the judicially created doctrine of obviousness-type double patenting. This basis for rejection is thus believed to be moot.

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CONCLUSION

In view of the foregoing, Applicant believes all claims now pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

Date: 2005 June 27


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